

1928

Department of Recs

OFFICE Board of Rec
STATION Madras

Ms. No. 43

B 6.2.77

Dated 1.29

Date	Initial
------	---------

To whom sent

Given for copying

Copied

Examined

Signed

Given for despatch

Despatched

Indexed

To be destroyed on *

JAN 1966

Pages in the file

(S U B J E C T.)

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Shirwa ug. S.no. 319 1/2 Eviction

L. Fernandez Orders passed



B-77

To

The Board of Revenue,

Land Revenue,

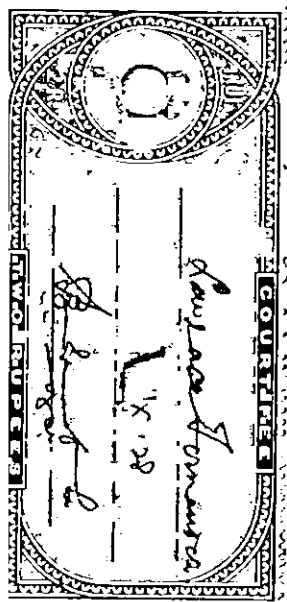
MADRAS.

Lawrence Fernandes, son of Alex Fernandes, }
Shirva Village, Udipi Taluk, South Kanara Dist. } Petitioner.

Dated 2nd. October 1928.

The petitioner abovenamed having been highly aggrieved by the order D. Dis. No: 343-28 dated 22-5-'28 of the ---- Collector of South Kanara rejecting his claim for S. No.319/2, 319/1B, 1C, of Shirva Village, Udipi Taluk, begs to represent as follows :-

2. That the plots S. Nos. 319/2, 319/1B, 1C, have been -- in the exclusive possession and enjoyment of the petitioner and his predecessor-in-interest for over 60 years and that therefore the Collector was not justified in summarily --- rejecting the petitioner's claim for the said plots.
3. That the plots are included within the boundaries of a Mulgeni-Chit executed by one Nadibettu Ramaya Hegade in ---- favour of Diog Saldanha in the year 1877 and also within the boundaries of a Sale-deed executed in 1897 by Shanbhogue -- Ananthaya in favour of Gabriel Minezes. The petitioner is the present owner of the land including the plots in question referred to in the said documents by purchase under a registered sale-deed dated 6-9-1922 executed in his favour by the widow of the above-named Diog Saldanha.
4. That the boundaries recited in the above said Mulgeni deed of 1877 and the sale-deed of 1897 are clearly identifiable on the ground and a mere glance at the plots will -- convince any officer that the said plots have been in ex-



exclusive enjoyment and possession of the petitioner and -- that they are not mere waste lands.

5. That the plots have been under an enclosure (fence) for a very long time from the time of the predecessors-in-interest of the petitioner and after the plots were purchased by the petitioner he has replaced the fence in the west by a stone wall at a cost of about Rs.100/--.

6. That though a patta was not granted for the plots at Settlement, the exclusive possession and enjoyment right of the petitioner should not have been over-looked by the Collector as the Board's Standing Order No. 15 gives preferential right to persons who are in actual possession and enjoyment of land by means of walls or other enclosure for a very long time.

7. That no officer of the Revenue Department above the rank of a Revenue Inspector inspected the plots before --- rejecting the petitioner's darkhast for the plots in D. R. No: 666-35 on the file of the Tahsildar of Udipi Taluk and the omission on their part to inspect the land before rejecting the darkhast and the inexperience in work of the Revenue Inspector who was then~~y~~ newly posted, ~~resulted~~ in the ---- rejection of petitioner's darkhast as the claims of the --- petitioner were not fully considered.

8. That in connection with an objection petition filed by the petitioner against the issue of notice under Sec: 7 of the Land Encroachment Act in E.C. 75-36 on the file of the Tahsildar of Udipi Taluk, the then Tahsildar inspected the locality and he was fully convinced that the plots in

p-479 (B)

p-189 (A)

question have been included within the boundaries of the -- documents referred to above. Even if the said documents are considered to be not binding on Government, due weight has to be given to them as they were executed before Settlement and as they prove that the plots have been in the exclusive possession of the predecessors-in-interest of the petitioner prior to the year 1877.

9. That the petitioner understands that it has been proposed to reserve one of the plots in question - viz: S. No: 319-2 for assignment to the houseless poor. There is a big rock in the said plot over an extent of about an acre and the remaining extent of the plot except a small portion in the East is a high plateau with rocky soil and water cannot be secured there owing to rocky bed. The plot is -- therefore not at all fit for assignment to the houseless poor. Besides, Shirva is the biggest Village in the Udipi Taluk and it has got a very large extent of waste land and the best -- portion of it can, without difficulty, be more available for assignment.to the poor.

10. That the plot in question contains scrub-jungle and the green leaves obtained from the said scrub-jungle is the only source of supply for manure needed for the cultivation of fields belonging to the petitioner. He has no other land where scrub-jungle is grown and if the petitioner is denied the plots, he will have to suffer greatly for want of manure for his cultivation and his cattle will suffer for want of fodder and pasturage.

11. * That the rain water falling on the rock and the other portion of S. No. 319-2 is collected in a Madaga (water -----

reservoir) constructed by the petitioner at the South-Eastern portion of S. No. 319-2 and the water so collected is being utilised for the 1st. rice crop of the petitioner in his adjoining bettu-fields during the cessation of the rains at broken periods during the monsoon. If the plot is ---- assigned to others the water-supply will be completely cut off and his bettu-fields, converted as such at heavy cost depending on this water-supply, will have to be allowed to lie fallow for want of supply of water.

12. That the extent of S. Nos. 319/1B & 1 C. being ---- small, the petitioner does not urge his claims for them. This petition is therefore in respect of S. No. 319-2 only.

13. That the petitioner therefore most humbly begs to request that the Honourable Board may be pleased to call for a complete report from the Collector in the matter, set-aside the Collector's order and issue orders directing the assignment of the plot S. No. 319-2 to the petitioner.

L. Hernandez.

D.Dis.No.3113-28.

Proceedings of the Collector of South Kanara, dated 22nd May 1928.

C.G. Herbert, Esquire, I.C.S.

Encroachment - Land - Udipi Taluk - Shirwa village -

S.Nos. 319 - Eviction - Appeal - Orders passed.
1B, 1C & 2

Read:-

- (1) Petition dated 31.3.1928 of Lores Fernandez.
- (2) Udipi Tahsildar's N.Dis.971/Sup.28 dated 7.5.1928.
- (3) Coondapoor Revenue Divisional Officer's N.Dis.2115-28 dated 11.5.1928.
- (4) All the connected records.

Order.

The appeal is rejected.

(Sd-) H. Sankara Rao,

For Collector.

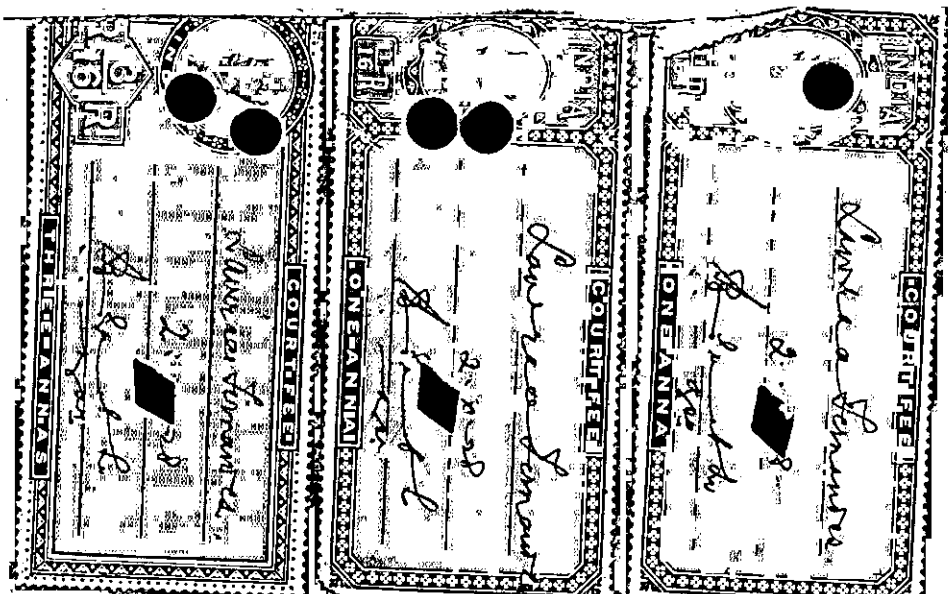
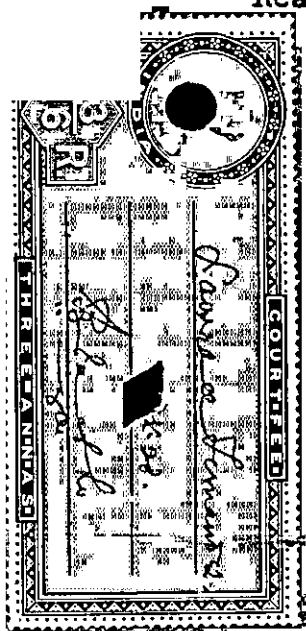
True Copy.
(By Order)

Huzur Sarishtadar.

To the appellant, Lores Fernandez son of Alex Fernandez residing at Shirwa village, Udipi Taluk.

2. Copy to the Revenue Divisional Officer, Coondapoor (in duplicate) with the records of E.C.75/1336 returned.

M.S.R./25.5.28.



AS (12)

6
Encroachment; Land (S. Kanara
ndipi taluk. Shirwa village
S.No. 319/2, etc. Eviction - Rem.
petition. of L. Fernandez

11-10-28

Read B.No. 6277/1928---Q.

R. no. 1. 87 24.11.28

12
24/11

Reference No. B 6277/28 dated 10.10.28

Issue
10.10.28

Forwarded to the Collector
of S. Kanara for submission of
the records with remarks on any alle-
gations in the petition which are not
clearly dealt with in the records

9-10-28
10/10

To the Collector of S. Kanara
with petition and enclosures
to be returned with reply)

1928

15 OCT 1928

R.L.
9/10
9.10.28

574

The collector's order is dated
p. 54. 22.5.28 and even if the peti-
considered as an encroachment
appeal. The time allowed is
2 months. (i.e. till 22.7.28.
peti. is out of time by more
2 1/2 months. As however, the
alleges occupation for a long

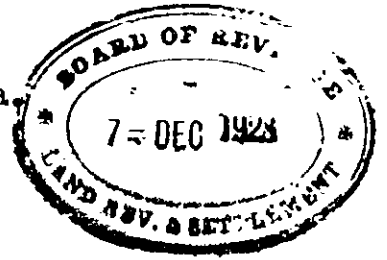
even prior to the sett. and as the
land is also alleged to have
been reserved for accommodation
to the homeless poor, it seems
desirable to investigate the
claim of the pctr. to the sites
question. The delay in the presentation
of this revn. pctr. may be condoned
and a report called for
stamps are sufficient.

R.O.C. A1-9353-28.

9
B7230
South Kanara Collector's Office,
Camp Mudabidri; 1st December 1928.

From

G.W. Wells, Esquire, M.A., I.C.S.,
Collector of South Kanara.



To

The Secretary to the Board,
Land Revenue and Settlement,
M a d r a s.

Sir,

Encroachment - Land - Udipi Taluk - Shirwa village -
S.Nos. 319 - eviction - petition to the Board - Lawrence
IB, IC & 2
Fernandez - Report submitted.

Board's Ref.No.B-6277/1928-1, dated 10.10.28.

pbq

(N)
The petitioner seeks a revision of the Collector's order D.Dis.3113-28, dated 22nd May 1928 passed in appeal against the issue of section 6 notice by the Revenue Divisional Officer, Coondapoor in respect of the encroachments on the above plots. Please see the eye-sketch dated 3.11.1928 submitted herewith.

(L)
2. The Tahsildar of Udipi having reported on 17.6.1926 that there was nothing on the ground to show exclusive possession and enjoyment of S.No.319/2, that there were no improvements or signs of conservation of tree growth on the plot, the Collector ordered its reservation for assignment to the houseless poor in his proceedings R.Dis.5205-26, dated 23.7.1926. The petitioner then applied to the Tahsildar, Udipi for the grant of the plot on darkhast. The Tahsildar rejected the application on 8.8.1926 on the ground that it had been reserved. Subsequently the petitioner partly enclosed with a stone and mud wall and fence the above plot and plots S.Nos. 319 which form portions of the village road
IB & IC

pbq 25

shown in the sketch. On 17.9.1926 he also prayed for a reconsideration of the Collector's order R.Dis.5205-26, dated 23.7.1926 quoted above. But his request was not granted and the encroachments were ordered to be removed in this office L.Dis.7779-26, dated 19.11.1926. Again the petitioner filed an objection petition against the Encroachment Case proceedings in 1927 and again the then Collector, Mr. Gawne, refused to pass a fresh order in his D.Dis.9249-27, dated 18.11.1927, seeing that the petitioner's act was a defiant one.

p. 517 (B)

(W)

3. Neither the warg claim nor the claim of enjoyment is sustainable. All the boundaries mentioned in the old documents referred to by the petitioner could not be identified on the ground by the Tahsildar who inspected the plots. Besides the sale deed dated 6.9.1922 relied upon by the petitioner does not mention S.No.319/2. It is also usual to show in private documents the private lands sold so as to include some Government land from which manure leaves are removed. Such private documents are not binding on Government. The only enjoyment of the plot by the petitioner is by utilizing the manure leaves existing on it. Such enjoyment can be claimed by any adjoining wargdar.

2 identifiable
p. 2 of (W)

4. The petitioner made further improvements on the plot S.No.319/2 by constructing a small madaga with a bund and a channel for conveying rain water to his dry field S.No.318/27 at a cost of about Rs.12. From enquiry, the Tahsildar reports that the supply of water from this madaga is meagre and that it cannot be said that the petitioner's dry fields are entirely dependent on the above supply.

5. It is a fact that there is a big rock in the plot over an extent of about 1 acre. The remaining portion of the plot is not a high plateau with rocky soil as alleged by the petitioner. The northern portion of the plot is a little higher in level than the southern. Enquiry shows that water can be had in the plot at some depth. It cannot, therefore,

be said that the plot is unfit for assignment to the houseless poor. It is a fact that Shirwa village is the biggest village in the Udipi Taluk and that it has a large extent of waste land, over 2000 acres. But a greater portion of it is kumki and there is no suitable land for assignment to the poor within a distance of about 2 miles from the plot.

6. The plot contains scrub jungle below 3 feet in height over an extent of about 3 acres. Though the petitioner possesses dry land, scrub jungle is reported to grow on an extent of only 1 acre and tree growth on an extent of about 75 cents.

7. No doubt the darkhast for the plot was rejected on the recommendation of the Revenue Inspector who had inspected it, but the Tahsildar had to go by the reservation ordered in Collector's R.Dis.5205/23.7.1926 quoted above.

8. As regards the encroachments on S.Nos. 319, they are clearly objectionable, as they tend to narrow the village road considerably and the petitioner also does not press his claims now in respect of them.

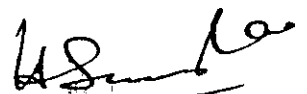
9. The present Sub-Collector, Coondapoor, however, raises the question whether in view of the facts that an area of 25.06 a reserved for grant to the houseless poor is still available for assignment, and that the petitioner is a poor wargdar paying an assessment of Rs.6-12-0 as mulgar and Rs.10-13-0 as mulgenidar, the plot S.No.319/2 which measures 3.89 acres should be classed as reserved and the petitioner deprived of his improvements. I do not think that this argument deserves consideration. If persons enclose or improve land reserved for others knowing of the order of reservation and in defiance of it, I consider that they should take the consequences.

10. The revision petition to the Board with its enclosure and

- List of records.
(1) This office R.Dis.5205-26.
(2) " D.Dis.3113-28.
(3) " D.Dis.9249-27.
(4) E.C.75/1336.
(5) D.R.No.666/1335.

the records noted in the accompanying list* are submitted herewith.

Your obedient servant,



For Collector.
01.12.23

udipi tuc

L. Fernandez Orders passed

” ” ” ————— ” ” ————— 192

7230. 5, " pac. 192
to call

192

RESOLUTION. (Mis) No. 43, dated 7.1. 1929

The Board considers that the land in question (S. no. 319.2) should not have been reserved. The Colr. is requested to disreserve it and assign it to the petr.

2. The petr. is referred
the Collr. for orders on this
petr read above.

to the collr. of S. I. Kawara
with records
as per list.

20 p114
taken copies

Rn
 57
 hr.
 5.1.28

2) pen para, 2 only

Address in p1 cf.

M1
SA
A.S. (h.R.)

Encroachment: (S. Kanara)

udipi tx. Shinnu
uge. S. nos. 319/1B, 1C & 2. Eviction. Lawrence
Fernandez

B. 6277

pp 1-4 of.

7230.

pp 9-11 of.

To A.S.

The Coltr's report meets all the
allegations in the petn

2. The Tahir's report at pp 1-2 of (W)
shows that he is convinced of the
exclusive possession and enjoyment of the
encroacher for a very long time. The
present R.D.O. also considers that the
reservation of the land in question
is unnecessary as an extent of 25.06 acres
reserved for grant is still available.
and that ^{the} assignment in favour of the
encroacher is desirable as he is a poor
wargdar.

the Tahir's report
was based on the
report of the R.D.
who inspected the land
12.12.42

(L)

It appears from the R.D.'s
earlier report at p 26 of (B)
that he
inspected the
locality
12.12.42

p 32 of (B)

3. The reservation was ordered
on the report of the Tahir who did not
inspect the site. There is no evidence of
inspection in the file - see p 32 of (B).
The R.D.'s report shows that the petn
portions in question was enclosed by the petn

though not substantiated ^{before reservation was recommended} - see the sketch

on p 9 of (B) - fence is shown like xxxx

The site in question is 31 1/2. This fact should have been taken into account as evidencing enjoyment by the petr.

That an extent of 25.06 acres is available should also have been considered

when ordering further reservations for D.C.

The petr. of course improved the land after reservation. But his enjoyment

prior to it should have prevailed and

the land should not have been

reserved. The petr. did not start improvements after reservation ^{as seems to be suggested in para 9, p 11 of the Collr's letter.} & only

continued the occupation in a more

effective way. For orders.

R. VEDAM 13/12 There was no substantial improvement

before reservation - vide R. V.'s report

at p. 32 of (B) - In the Dec. stated

in para 9 of the Collr's report p 11 of

it is for orders whether the Collr's

order may not be upheld.

HL 13.12.28 " To Secy. The Collr. says also that p 11 of The petr.

there is no suitable land for arrangement of ^{is said to have included} the petr. ^{only} after arrangement

in poor within a distance of abt. two miles from ^{was refused but it is not} clear whether the

plot. His order may be upheld & the petr. dismissed ^{viadaya was constructed}

L2 ... L2

^{refused} the petr. ^{refused} of assignment. Petition to be for. In view of the order of the court

That there is still 25 odd acres for homing the
poor & that the poor shall have the
reserved.

Accepted

See
17.12

WMS
24/12

To A.S. (HR)

Draft enclosed.

6
7.1.29.

PR
5/1
HR
5.1.29.

Issued
HR
7.1.29